D.B. CIVIL SPECIAL APPEAL (W) NO.238/2007

Assistant Engineer, PWD City,
Sub-Division-IV, Jodhpur and Ors.

Vs.

Prithvi Raj and Anr.

Date of Order :: 17.4.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. N.M. Lodha, Addl. Advocate General.
Mr. Vijay Mehta, for the respondent.

Heard learned counsel for the parties.

This appeal is directed against the judgment of learned Single Judge dated 31.8.2005 modifying the award of the learned Labour Court, Jodhpur dated 23.10.1998 by which the termination of services of the respondent-workman was held to be invalid retrenchment, and the workman was held entitled to compensation in the sum of Rs.41,000/- in lieu of reinstatement. Vide judgment under appeal, the award has been modified to reinstate the workman instead of allowing him compensation.

The employer had not challenged the award, therefore, so far as the invalidity of retrenchment is concerned it is a finding of fact and does not require consideration.

The other findings and facts which are not in dispute before us are that the respondent-employee was a daily rated employee and was in continuous employment of the employer for more than 4 years when his services were terminated in 1992. The dispute has been raised about invalidity of retrenchment within reasonable period.

The workman had challenged the award inter alia on the ground that in the aforesaid circumstances the reinstatement was only proper remedy inasmuch as, he has served for more than four years continuously under the department whereas the same Tribunal in the award passed on 20.7.1998 in the case of illegal retrenchment after service of about four years, had awarded reinstatement without any back-wages, until the date of reference without counting the services from the date of termination till the date of reference. In other words, the interim period was considered as dies non. The learned Single Judge has allowed the writ petition filed by the petitioner with full backwages vide judgment under appeal.

Hence, this appeal.

Learned counsel for the appellant has

relied on the Bench decision of this Court in D.B. CIVIL SPECIAL APPEAL No. 625/2006 (State of Rajsthan and Anr. Vs. Gopal Bohra and Anr.) decided on 13.12.2006 wherein this Court has sustained the order of award of compensation in lieu of reinstatement and set-aside the order of reinstatement granted by the learned Single Judge, however, the quantum of compensation has been enhanced.

However, we find that the aforesaid case was a case in which the incumbent worked only for 8 months and has not been employed for a sufficiently long period of service so as to justify reinstatement with continuity in service with full backwages at such distance of time, particularly, keeping in view the fact that dispute had been raised after about 9 years.

In the present case the workman has been in continuous service of 4 and 1/2 years and has not been found guilty of latches in raising the dispute and he being a workman of lowest category and the fact that after retrenchment for many years he has also been denied reinstatement which was clearly in the breach of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act of 1947'), which takes effect notwithstanding anything, contrary to any other law, contract or

rules by virtue of Section 25J of the Act of 1947. The award of reinstatement passed by the learned Single Judge appears to be in consonance with the principles ennunciated by the Hon'ble Supreme Court in this regard and does not call for any interference. However, the grant of full backwages for the period the respondent has not worked when he was employed only as a daily rated worker was not justified.

Learned counsel for the respondent has candidly stated that so far as the award of backwages by the learned Single Judge is concerned, he waives backwages.

In these circumstances, the appeal is partly allowed. The order of the learned Single Judge under challenge is set-aside to the extent of awarding backwages, the respondent shall not be entitled to any backwages. The reinstatement of service may be made only in the capacity in which he was employed before the date of termination. The award may be executed within two weeks.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

/rm